

## Message Text

LIMITED OFFICIAL USE

PAGE 01 STATE 175363

66

ORIGIN STR-04

INFO OCT-01 EUR-12 IO-13 ISO-00 AID-05 CEA-01 CIAE-00

COME-00 EB-07 FRB-03 INR-07 NSAE-00 CIEP-01 SP-02

TRSE-00 LAB-04 SIL-01 SAM-01 OMB-01 DODE-00 L-03 /066 R

DRAFTED BY STR:MPOMERANZ/AGR:GWHITE:CTB

APPROVED BY STR:WBKELLY

STATE WCLARK

LABOR RSCHULMAN

COMMERCE FMONTGOMERY

DEFENSE JDARLING

TREASURY JSCHOTT

OMB LHAUGH

----- 027504

P 151900Z JUL 76

FM SECSTATE WASHDC

TO USDEL MTN GENEVA PRIORITY

INFO USMISSION OECD PARIS PRIORITY

USMISSION EC BRUSSELS PRIORITY

AMEMBASSY DUBLIN PRIORITY

AMEMBASSY LUXEMBOURG PRIORITY

AMEMBASSY BRUSSELS PRIORITY

AMEMBASSY COPENHAGEN PRIORITY

AMEMBASSY BONN PRIORITY

AMEMBASSY PARIS PRIORITY

AMEMBASSY ROME PRIORITY

AMEMBASSY THE HAGUE PRIORITY

AMEMBASSY LONDON PRIORITY

USMISSION NATO PRIORITY

LIMITED OFFICIAL USE STATE 175363

E.O. 11652: N/A

TAGS: OECD, ETRD, MTN

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 175363

SUBJECT: TECHNICAL CONSULTATIONS WITH EC ON GOVERNMENT

## PROCUREMENT

FOLLOWING IS POSITION PAPER, APPROVED BY TPSC, FOR U.S.-  
EC BILATERAL CONSULTATIONS ON GOVERNMENT PROCUREMENT

### PROBLEM

1. DURING THE RECENT U.S.-EC BILATERAL NEGOTIATIONS ON THE  
PROPOSED OECD CODE ON GOVERNMENT PROCUREMENT, ATTENTION WAS  
DEVOTED TO THE ISSUES OF SAFEGUARDS, TRANSPARENCY, BEST  
ENDEAVORS, SUPPLIER INQUIRY RIGHTS, DATA AND THRESHOLD.  
AGREEMENT WAS NOT REACHED ON HOW TO RESOLVE DIFFERENCES,  
BUT THERE APPEARED TO BE SOME ROOM FOR NEGOTIATION AND  
COMPROMISE. THIS PAPER IS TO PROVIDE THE BASIS FOR THE  
TECHNICAL DISCUSSIONS WITH THE COMMISSION NOW SCHEDULED FOR  
JULY 22 AND 23.

### U.S. POSITION

2. THE U.S. IS ENCOURAGED BY RECENT PROGRESS IN THE U.S.-  
EC BILATERAL NEGOTIATIONS ON GOVERNMENT PROCUREMENT AND  
BELIEVES CONTINUED EFFORTS TO PRODUCE A DRAFT CODE, WHICH

CAN BE USED AS A BASIS FOR NEGOTIATIONS IN THE MTN, SHOULD  
BE UNDERTAKEN BILATERALLY WITH THE EC. IN ORDER TO  
FACILITATE COMPROMISES WITH THE EC ON MAJOR ELEMENTS OF A  
DRAFT CODE, THE U.S. IS WILLING TO CONSIDER POSSIBLE  
MODIFICATIONS OF ITS POSITION ON SAFEGUARDS, BEST ENDEAVORS,  
THRESHOLD AND TRANSPARENCY.

### TALKING POINTS

#### SAFEGUARDS

3. THE U.S. APPRECIATES THE EC CONCERN THAT UNFORESEEN  
DEVELOPMENTS MAY MAKE IT IMPERATIVE THAT A CONTRACTING  
PARTY UNDER THIS AGREEMENT HAVE THE LATITUDE TO TAKE SOME  
TYPE OF EMERGENCY ACTION. WE EXPECT THAT THE COMMUNITY  
WILL PRESENT A REVISION OF ITS SAFEGUARD PROPOSALS WHICH  
WOULD BE TIGHTER AND MORE PRECISE. WHILE WE WOULD, OF  
LIMITED OFFICIAL USE

#### LIMITED OFFICIAL USE

PAGE 03     STATE 175363

COURSE, GIVE FULL CONSIDERATION TO ANY NEW TEXT PROVIDED  
BY THE EC WE CONSIDER THAT THE MORE PROFITABLE ROUTE FOR  
SOLVING THIS PROBLEM WOULD BE THROUGH THE DISCUSSIONS TO  
DEVELOP A NEW, IMPROVED SAFEGUARD CODE IN THE GENEVA  
TRADE NEGOTIATIONS. WE BELIEVE THAT SUCH A CODE WILL  
ADEQUATELY COVER THE EC CONCERN IN THIS AREA. THEREFORE,  
THE U.S. SHOULD PROPOSE THE POSSIBILITY OF THE INCLUSION  
OF A STATEMENT IN THE GOVERNMENT PURCHASING CODE TO THE

EFFECT THAT NO PROVISIONS OF THE GOVERNMENT PURCHASING CODE WOULD APPLY IN SUCH A MANNER AS TO PRECLUDE ACTIONS TAKEN UNDER ARTICLE XIX OF GATT, OR UNDER A NEW SAFEGUARD CODE, FROM APPLYING TO GOVERNMENT PURCHASES OF THE PRODUCTS COVERED BY SUCH ACTION.

4. FYI - THE DEL SHOULD BE AWARE THAT THE EC'S INTEREST IN A SAFEGUARD TYPE DEROGATION IS BASED IN PART ON A DESIRE TO DEPART FROM THE CODE FOR SERIOUS BOP PROBLEMS. THE U.S. SHOULD CONTINUE TO RESIST PROPOSALS FOR SUCH DEROGATIONS, BUT WE ARE WILLING TO LISTEN TO THE EC'S REASONS FOR SUCH DEROGATIONS AND SPECIFIC PROPOSALS FOR IMPLEMENTING THEM. END FYI.

BEST ENDEAVORS

5. THE EC HAS SUGGESTED THAT A CODE ON GOVERNMENT PURCHASING HAVE TWO LEVELS OF OBLIGATION. THE FIRST LEVEL WOULD BE FULL APPLICATION OF ALL PROVISIONS OF THE CODE. THE SECOND LEVEL WOULD BE FOR THOSE ENTITIES WHICH, FOR LEGAL OR OTHER REASONS, MIGHT NOT APPLY ALL PROVISIONS OF THE CODE. FOR SUCH ENTITIES THE SIGNATORY GOVERNMENT WOULD UNDERTAKE TO SEE THAT THE SPIRIT OF THE CODE WAS

CARRIED OUT. THE COMMUNITY HAS NOT YET FULLY DELINEATED HOW THIS WOULD WORK. WE EXPECT THEY WILL DO SO IN THE TECHNICAL DISCUSSIONS.

6. THE BASIC U.S. POSITION IS THAT THE FULL APPLICATION OF THE CODE SHOULD COVER THE GREATEST NUMBER OF ENTITIES POSSIBLE. WE MIGHT, DEPENDING ON WHAT THE TWO-TIER APPROACH TURNS OUT TO BE, BE AGREEABLE TO THE TWO STAGE APPROACH SUGGESTED BY THE EC AS A TEMPORARY MEASURE. WE LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 STATE 175363

SHOULD EXPLORE WITH THE EC THE POSSIBILITY OF LINKING U.S. ACCEPTANCE OF THE TWO LEVEL APPROACH WITH SOME UNDERTAKING BY THE EC ON A TIMEFRAME WITHIN WHICH ENTITIES COVERED BY SECOND LEVEL OBLIGATIONS WOULD BE BROUGHT UNDER FIRST LEVEL OBLIGATIONS.

SUPPLIER INQUIRY RIGHTS

7. THE U.S. SHOULD SUGGEST THAT THE CODE INCLUDE A STATEMENT TO THE EFFECT THAT SUPPLIERS PARTICIPATING IN COMPETITION FOR A PARTICULAR PROCUREMENT SHOULD BE ENTITLED TO MAKE INQUIRIES CONCERNING ANY ASPECT OF THE PROCUREMENT AND BE INSURED OF A PROMPT REPLY. WE OFFER THE FOLLOWING TEXT FOR THIS PURPOSE: "SUPPLIERS INTERESTED IN A PARTICULAR PROCUREMENT SHOULD BE ENTITLED TO MAKE INQUIRY CON-

CERNING ANY ASPECT OF THE PROCUREMENT AND BE ASSURED PROMPT RESPONSE TO SUCH INQUIRY." WE SHOULD ALSO OFFER THE FOLLOWING ADDITION FOR INSERTION AT THE VERY BEGINNING OF PARAGRAPH 18 OF THE DRAFT CODE: "PURCHASING ENTITIES SHALL PROVIDE THE TENDER DOCUMENT IN RESPONSE TO A REQUEST FROM BONA FIDE SUPPLIERS AND SHALL RESPOND PROMPTLY AND FULLY TO INQUIRIES FOR CLARIFICATION OF DETAILS PRIOR TO THE CLOSING DATE OF THE TENDER."

#### TRANSPARENCY

8. THE INTEGRITY OF THE PROCUREMENT CODE DEPENDS LARGELY UPON THE ABILITY OF POTENTIAL SUPPLIERS TO DETERMINE THAT THEY HAVE RECEIVED EQUITABLE TREATMENT BY THE PROCURING GOVERNMENT. THE U.S. WOULD PREFER THAT ALL SIGNATORIES PUBLISH THE NAME OF THE WINNING FIRM AND THE AMOUNT OF THE BID. THE EC HAS INFORMED US THAT IT WOULD NOT BE POSSIBLE, AT LEAST AT THE OUTSET OF ANY CODE, FOR THE EC TO MOVE TO COMPLETE PUBLICATION.

9. THE U.S. UNDERSTANDS THAT IT WOULD BE DIFFICULT FOR THE EC TO IMMEDIATELY INSTITUTE A POLICY OF COMPLETE PUBLICATION OF PROCUREMENT DATA. THE EC EARLIER HINTED THAT, UNDER PARAGRAPH 33 OF THE DRAFT CODE, IT MIGHT BE PREPARED

TO PROVIDE TO THE UNSUCCESSFUL BIDDER THE NAME OF THE WIN-LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 05 STATE 175363

NING BIDDER AND THE AMOUNT OF HIS BID. WE SHOULD PRESS THE EC TO DETERMINE IF SUCH MIGHT BE THE CASE. FAILING THIS THE U.S. SHOULD EXPLORE AS A POSSIBILITY, AN INTERMEDIATE SOLUTION, THAT THE AMOUNT OF THE WINNING BID AND THE NAME OF THE WINNING BIDDER BE PROVIDED BY THE PROCURING GOVERNMENT TO THE GOVERNMENT REPRESENTING A POTENTIAL SUPPLIER AT ITS DISCRETION. HOPEFULLY, THIS IS AN INTERMEDIATE SOLUTION WHICH WILL ALLOW THE EC SUFFICIENT TIME FOR AN ORDERLY TRANSITION TO A POLICY OF COMPLETE PUBLICATION OF PROCUREMENT DATA AT SOME TIME IN THE FUTURE.

#### DATA AND THRESHOLD

10. AT THE POLICY LEVEL BILATERAL WITH THE EC. GALLAGHER TOLD HIS STAFF THAT MORE PRECISE DATA SHOULD BE FORTHCOMING AS TO THE UNIVERSE OF EC GOODS PROCUREMENT AND THAT THE TECHNICAL DISCUSSIONS WITH THE U.S. ON DATA SHOULD EXPLORE WHAT COULD BE DONE TO PROVIDE THE DATA NEEDED FOR THE NEGOTIATIONS. CLEARLY THE TECHNICAL DISCUSSIONS WILL FIRST HAVE TO EXPLORE WHAT THE EC HAS DONE IN THIS REGARD IN THE INTERIM. THE DISCUSSIONS WILL ALSO HAVE TO FOCUS ON WHAT THE COUNTRY DATA REVEALS AS TO THE THRESHOLD. U.K.,

JAPANESE AND OTHER COUNTRY DATA REVEAL THAT A CONSIDERABLE PART OF THEIR PROCUREMENTS WILL REMAIN OUTSIDE THE CODE IF THE THRESHOLD IS OVER \$100,000. THE U.S. WILL EXHIBIT A FORTHCOMING ATTITUDE ON THE THRESHOLD, INDICATING OUR WILLINGNESS TO MOVE IN THE DIRECTION OF ONE HIGHER THAN OUR LAST PROPOSAL. THE U.S. SHOULD INDICATE THAT WE WOULD CONSIDER THE INCLUSION OF LANGUAGE TO PROVIDE FOR PERIODIC REVIEW OF THE THRESHOLD TO REFLECT INFLATIONARY MOVEMENTS PROVIDED A SATISFACTORY INITIAL LEVEL CAN BE AGREED UPON.

#### TIMING

11. RESOLUTION OF OUTSTANDING DIFFERENCES BETWEEN U.S. AND EC IS PARTICULARLY IMPORTANT AT THIS TIME BECAUSE OF THE SCHEDULING OF SUBSTANTIVE DISCUSSIONS ON GOVERNMENT PROCUREMENT IN THE MTN. THEREFORE THE U.S. SHOULD SEEK TO REAFFIRM AGREEMENT THAT WORK ON DRAFT CODE PROCEED EXPEDITIOUSLY. KISSINGER

LIMITED OFFICIAL USE

NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** POLICIES, TRADE, RELATIONS WITH REGIONAL ORGS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 15 JUL 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** ShawDG  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976STATE175363  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** MPOMERANZ/AGR:GWHITE:CTB  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Film Number:** D760273-0888  
**From:** STATE  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1976/newtext/t19760754/aaaabvie.tel  
**Line Count:** 240  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ORIGIN STR  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 5  
**Previous Channel Indicators:** n/a  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** ShawDG  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 05 APR 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <05 APR 2004 by greeneet>; APPROVED <12 AUG 2004 by ShawDG>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** TECHNICAL CONSULTATIONS WITH EC ON GOVERNMENT PROCUREMENT  
**TAGS:** ETRD, US, OECD, MTN  
**To:** MTN GENEVA  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006